

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE VILLAS AT WOODSON BEND)	
CONDOMINIUM ASSOCIATION, INC., ET AL ¹)	
)	
COMPLAINANTS)	
V.)	CASE NO. 2009-00037
)	
SOUTH FORK DEVELOPMENT, INC., TIMOTHY L.)	
GROSS, AND THE JANICE GROSS LIVING)	
REVOCALE TRUST)	
)	
DEFENDANTS)	

ORDER

This matter involves a formal complaint against the owners of a sewage collection and treatment facility for their alleged failure to comply with the provisions of KRS Chapter 278. Finding that the matters raised in the Complaint are moot, we dismiss the Complaint without prejudice.

The Villas at Woodson Bend Condominium Association, Inc. ("Condominium Association") is a non-profit corporation organized under KRS Chapter 273. It is composed of the owners of condominium units within the Villas at Woodson Bend, a real estate condominium project located in Pulaski County, Kentucky.

South Fork Development, Inc. ("South Fork"), is a Kentucky corporation incorporated in 1994 under the provisions of KRS Chapter 271B for the purpose of real

¹ In its Complaint, the Complainant refers to itself as "The Villas of Woodson Bend Condominium Association, Inc." The records of the Kentucky Secretary of State, however, indicate that the Complainant's legal title is "The Villas at Woodson Bend Condominium Association, Inc." See <https://app.sos.ky.gov/corpscans/03/0622903-09-99999-20051004-ART-440633-PU.pdf> (last visited Dec. 6, 2011). We have amended the style of this proceeding accordingly.

property development.² Since December 7, 2000, it has operated under the name of “The Villas at Woodson Bend.”³

Timothy L. Gross is an incorporator of South Fork⁴ and has served as a corporate officer of South Fork since its incorporation. South Fork’s most recent annual report on file with the Kentucky Secretary of State lists Mr. Gross as South Fork’s President and Secretary.⁵

On April 1, 2002, South Fork filed a Master Deed with the Pulaski County Clerk’s Office establishing a condominium property regime and designating a 48-acre tract of land as “The Villas at Woodson Bend.” Eight months earlier, the Kentucky Division of Water (“DOW”) granted authorization to South Fork to operate a no discharge waste treatment system on property that adjoined the condominium development and that the Janice Gross Living Revocable Trust owned.⁶ This system, which consisted of two aerated treatment lagoons and one polishing, evapotranspiration pond, has a design treatment capacity of 65 residential units.⁷ In 2006, the DOW approved South Fork’s

² Articles of Incorporation of South Fork Development, Inc. at 1 (Sep. 19, 1994) <https://app.sos.ky.gov/corpscans/57/0335957-09-99999-19940919-ART-2242144-PU.pdf> (last visited Dec. 6, 2011).

³ Certificate of Assumed Name (Dec. 7, 2000), [https://app.sos.ky.gov/ftshow/\(S\(4krm2rjcvxdbdfa5qpnsvn2r\)\)/genpdf.aspx?ctr=1222842](https://app.sos.ky.gov/ftshow/(S(4krm2rjcvxdbdfa5qpnsvn2r))/genpdf.aspx?ctr=1222842) (last visited Dec. 6, 2011).

⁴ Articles of Incorporation of South Fork Development, Inc. at 1.

⁵ Annual Report of South Fork Development (Sep. 2, 2009) <https://app.sos.ky.gov/corpscans/57/0335957-09-99999-20090902-ARP-4170561-PU.pdf> (last visited Dec. 6, 2011).

⁶ Letter from Jack A. Wilson, Director, Kentucky Division of Water, to Timothy L. Gross, South Fork Development (July 25, 2001) (filed on May 29, 2009). This authorization was for a five-year period. In February 2007, DOW renewed this authorization for another five-year period.

⁷ Letter from David S. Pyzoha, Principal, Evans, Mechwart, Hambleton & Tilton, Inc., to Tina Bailey, Kentucky Division of Water (Aug. 10, 2006) (filed on May 29, 2009).

application to construct a collection system to connect the condominium development to the wastewater treatment system.⁸

On January 30, 2009, the Condominium Association filed a formal complaint in which it alleged that the Defendants had constructed and were operating these facilities in violation of the provisions of KRS Chapter 278. More specifically, it alleged that: the Defendants had constructed the facilities without first obtaining a Certificate of Public Convenience and Necessity; the facilities were subject to Commission regulation; the Defendants were assessing rates for the service that were not filed with the Commission; and Defendants were not properly operating the facilities or providing adequate service. It requested, *inter alia*, that the Commission appoint a trustee to operate the facilities and affirm that the Defendants could not assess a rate for services that the facilities provide without Commission approval.

In their Answer, the Defendants denied that the Commission had jurisdiction over the facilities. They further denied the allegations that the facilities were constructed without appropriate regulatory approvals. They requested dismissal of the Commission proceeding.⁹

While this matter has been pending before the Commission, Citizens National Bank of Somerset, Kentucky brought an action in Pulaski Circuit Court against the Defendants and others to enforce the terms of promissory notes and to foreclose on mortgages that secured payment of the promissory notes.¹⁰ The sewage collection and

⁸ Letter from Harold S. Sparks, Supervisor, Facilities Construction Branch, Kentucky Division of Water, to David S. Pyzoha, Principal, Evans, Mechwart, Hambleton & Tilton, Inc. (June 22, 2006) (filed on May 29, 2009).

⁹ Answer at 4-5 (filed Feb. 24, 2009).

¹⁰ *Citizens National Bank v. Kenison*, No. 09-CI-00231 (Pulaski Cir. Ct. Ky. filed Feb. 18, 2009).

treatment facilities were among the properties for which Citizens National Bank sought foreclosure. On November 20, 2009, Pulaski Circuit Court granted judgment against the Defendants and ordered the sale of the properties that secured the debts.¹¹ On April 28, 2011, a master commissioner sold the sewage collection and treatment facilities at issue in this matter to Citizens National Bank subject to Commission approval.¹² Citizens National Bank has since applied to the Commission for approval of its acquisition of the facilities or, if Commission approval of the acquisition is not required, a Certificate of Public Convenience and Necessity to operate the facilities.¹³ Citizens National Bank is currently operating the facilities at no cost and has undertaken significant repairs at its own expense.¹⁴

The Commission finds that the judicial sale of the facilities in question, Citizens National Bank's subsequent application to the Commission, and its efforts to operate the facilities pending final Commission action on its application have rendered moot the issues raised in the Complaint.

IT IS THEREFORE ORDERED that:

1. The Complaint is dismissed without prejudice.
2. This case is closed and shall be removed from the Commission's docket.

¹¹ *Citizens National Bank v. Kenison*, No. 09-CI-00231 (Pulaski Cir. Ct. Ky. Nov. 20, 2009).

¹² *Citizens National Bank v. Kenison*, No. 09-CI-00231 (Pulaski Cir. Ct. Ky. June 29, 2011).

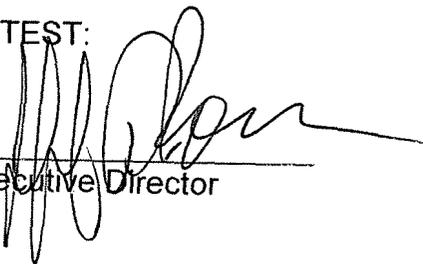
¹³ Case No. 2011-00302, *Application of Citizens National Bank of Somerset, Kentucky For an Order Approving a Transfer of Ownership and Control* (Ky. PSC received Aug. 17, 2011).

¹⁴ Application of Citizens National Bank at 3-4 (received on Aug. 17, 2011 in Case No. 2011-00302).

By the Commission

ENTERED ^{PA}
DEC 19 2011
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Dressman, Benzinger & LaVelle, PSC
207 Thomas More Parkway
Crestview Hills, KENTUCKY 41017-2596

Michael Hirn
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KENTUCKY 40202

Richard G Meyer
Dressman Benzinger LaVelle PSC
207 Thomas Moore Parkway
Crestview Hills, KENTUCKY 41017-2596

South Fork Development, Inc.
100 The Villas
Bronston, KENTUCKY 42518

The Villas of Woodson Bend Bend Condo. Assoc.
2609 Idlewood Drive
Lexington, KENTUCKY 40513